

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

KATE CROUCH,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION FILE
v.	)	
	)	NO. 1:11-CV-00397-TCB-RGV
FEDERAL NATIONAL MORTGAGE)		
ASSOCIATION, and	)	
GMAC MORTGAGE, LLC,	)	
	)	
Defendants.	)	

**ANSWER OF DEFENDANTS**

Defendants Federal National Mortgage Association and GMAC Mortgage, LLC, without waiving but instead specifically preserving their defense of ineffective service of process, file their Answer to Plaintiff's Complaint as follows:

**FIRST DEFENSE**

Defendants respond to the separately numbered paragraphs of Plaintiff's Complaint as follows:

1. Defendants deny the allegations in Paragraph 1 of Plaintiff's Complaint.
2. To the extent the allegations in Paragraph 2 of Plaintiff's Complaint refer or relate to or rely on written documents, those documents speak for themselves as to their content and legal effect, and Defendants deny all allegations

inconsistent therewith.

3. Defendants deny that Plaintiff continues to be the legal and equitable owner of the subject property. Except as stated, Defendants presently lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 3 of Plaintiff's Complaint.

4. Federal National Mortgage Association ("FNMA") is a federally chartered corporation. FNMA presently holds title to the subject property and has commenced a dispossessory action, which currently is on hold. Except as stated, Defendants deny the allegations in Paragraph 4 of Plaintiff's Complaint.

5. Defendants state that GMAC is a limited liability company. Except as stated, Defendants deny the allegations in said Paragraph.

6. Paragraph 6 of Plaintiff's Complaint sets forth legal conclusions requiring no response from Defendants. To the extent any response is required, Defendants deny the allegations in said Paragraph.

7. Defendants do not contest venue in this Court.

8. To the extent the allegations in Paragraph 8 of Plaintiff's Complaint refer or relate to or rely on written documents, those documents speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith.

9. To the extent the allegations in Paragraph 9 of Plaintiff's Complaint

refer or relate to or rely on written documents, those documents speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith.

10. To the extent the allegations in Paragraph 10 of Plaintiff's Complaint refer or relate to or rely on written documents, those documents speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith.

11. Paragraph 11 of Plaintiff's Complaint sets forth legal conclusions requiring no response from Defendants. To the extent any response is required, Defendants deny the allegations in said Paragraph.

12. To the extent the allegations in Paragraph 12 of Plaintiff's Complaint refer or relate to or rely on written documents, those documents speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith.

13. To the extent the allegations in Paragraph 13 of Plaintiff's Complaint refer or relate to or rely on written documents, those documents speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith. Except as stated, Defendants deny the allegations in said Paragraph.

14. To the extent the allegations in Paragraph 14 of Plaintiff's Complaint

refer or relate to or rely on written documents, those documents speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith.

15. Paragraph 15 of Plaintiff's Complaint sets forth legal conclusions requiring no response from Defendants. To the extent any response is required, Defendants deny the allegations in said Paragraph.

16. Paragraph 16 of Plaintiff's Complaint sets forth legal conclusions requiring no response from Defendants. To the extent any response is required, Defendants deny the allegations in said Paragraph.

17. Paragraph 17 of Plaintiff's Complaint sets forth legal conclusions requiring no response from Defendants. To the extent any response is required, Defendants deny the allegations in said Paragraph.

18. Paragraph 18 of Plaintiff's Complaint sets forth legal conclusions requiring no response from Defendants. To the extent any response is required, Defendants deny the allegations in said Paragraph.

19. To the extent the allegations in Paragraph 19 of Plaintiff's Complaint refer or relate to or rely on written documents or written legal pronouncements, those documents and pronouncements speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith. Except as stated, Defendants deny the allegations in said Paragraph.

20. To the extent the allegations in Paragraph 20 of Plaintiff's Complaint refer or relate to or rely on written documents or written legal pronouncements, those documents and pronouncements speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith. Except as stated, Defendants deny the allegations in said Paragraph.

21. To the extent the allegations in Paragraph 21 of Plaintiff's Complaint refer or relate to or rely on written documents, those documents speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith.

22. To the extent the allegations in Paragraph 22 of Plaintiff's Complaint refer or relate to or rely on written documents, those documents speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith. Except as stated, Defendants deny the allegations in said Paragraph.

23. To the extent the allegations in Paragraph 23 of Plaintiff's Complaint refer or relate to or rely on written documents, those documents speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith.

24. Defendants deny the allegations in Paragraph 24 of Plaintiff's Complaint.

25. To the extent the allegations in Paragraph 25 of Plaintiff's Complaint refer or relate to or rely on written documents, those documents speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith.

26. To the extent the allegations in Paragraph 26 of Plaintiff's Complaint refer or relate to or rely on written documents, those documents speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith.

27. To the extent the allegations in Paragraph 27 of Plaintiff's Complaint refer or relate to or rely on written documents, those documents speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith. Except as stated, Defendants deny the allegations in said Paragraph.

28. To the extent the allegations in Paragraph 28 of Plaintiff's Complaint refer or relate to or rely on written documents, those documents speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith. Except as stated, Defendants deny the allegations in said Paragraph.

29. Defendants deny the allegations in Paragraph 29 of Plaintiff's Complaint.

30. Paragraph 30 of Plaintiff's Complaint sets forth legal conclusions requiring no response from Defendants. To the extent any response is required, Defendants deny the allegations in said Paragraph.

31. To the extent the allegations in Paragraph 31 of Plaintiff's Complaint refer or relate to or rely on written documents, those documents speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith.

32. To the extent the allegations in Paragraph 32 of Plaintiff's Complaint refer or relate to or rely on written documents, those documents speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith.

33. Defendants deny the allegations in Paragraph 33 of Plaintiff's Complaint.

#### COUNT I

34. Defendants incorporate by reference herein their foregoing responses to Paragraphs 1 through 33 of Plaintiff's Complaint in their entirety.

35. Paragraph 35 of Plaintiff's Complaint sets forth legal conclusions requiring no response from Defendants. To the extent any response is required, Defendants deny all allegations in said Paragraph.

36. Defendants deny the allegations in Paragraph 36 of Plaintiff's

Complaint.

37. Paragraph 37 of Plaintiff's Complaint sets forth legal conclusions requiring no response from Defendants. To the extent any response is required, Defendants deny the allegations in said Paragraph.

38. Defendants deny the allegations in Paragraph 38 of Plaintiff's Complaint.

39. Defendants deny the allegations in Paragraph 39 of Plaintiff's Complaint.

40. Defendants deny the allegations in Paragraph 40 of Plaintiff's Complaint.

## COUNT II

41. Defendants incorporate by reference herein their foregoing responses to Paragraphs 1 through 40 of Plaintiff's Complaint in their entirety.

42. Paragraph 42 of Plaintiff's Complaint sets forth legal conclusions requiring no response from Defendants. To the extent any response is required, Defendants deny the allegations in said Paragraph.

43. Paragraph 43 of Plaintiff's Complaint sets forth legal conclusions requiring no response from Defendants. To the extent any response is required, Defendants deny the allegations in said Paragraph.

44. Defendants deny the allegations in Paragraph 44 of Plaintiff's



Complaint.

45. Defendants deny the allegations in Paragraph 45 of Plaintiff's

Complaint.

46. Defendants deny the allegations in Paragraph 46 of Plaintiff's

Complaint.

47. Defendants deny the allegations in Paragraph 47 of Plaintiff's

Complaint.

48. Defendants deny the allegations in Paragraph 48 of Plaintiff's

Complaint.

49. Defendants deny the allegations in Paragraph 49 of Plaintiff's

Complaint.

50. Defendants deny the allegations in Paragraph 50 of Plaintiff's

Complaint.

### COUNT III

51. Defendants incorporate by reference herein their foregoing responses to Paragraphs 1 through 50 of Plaintiff's Complaint in their entirety.

52. Paragraph 52 of Plaintiff's Complaint sets forth legal conclusions requiring no response from Defendants. To the extent any response is required, Defendants deny the allegations in said Paragraph.

53. Defendants deny the allegations in Paragraph 53 of Plaintiff's

Complaint.

54. Defendants deny the allegations in Paragraph 54 of Plaintiff's

Complaint.

55. Defendants deny the allegations in Paragraph 55 of Plaintiff's

Complaint.

56. Defendants deny the allegations in Paragraph 56 of Plaintiff's

Complaint.

57. Defendants deny the allegations in Paragraph 57 of Plaintiff's

Complaint.

58. Defendants deny the allegations in Paragraph 58 of Plaintiff's

Complaint.

59. To the extent the allegations in Paragraph 59 of Plaintiff's Complaint refer or relate to or rely on written documents, those documents speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith.

60. To the extent the allegations in Paragraph 60 of Plaintiff's Complaint refer or relate to or rely on written documents, those documents speak for themselves as to their content and legal effect, and Defendants deny all allegations inconsistent therewith.

61. Defendants deny the allegations in Paragraph 61 of Plaintiff's

Complaint.

62. Defendants deny the allegations in Paragraph 62 of Plaintiff's

Complaint.

63. Defendants deny the allegations in Paragraph 63 of Plaintiff's

Complaint.

#### COUNT IV

64. Defendants incorporate by reference herein their foregoing responses to Paragraphs 1 through 63 of Plaintiff's Complaint in their entirety.

65. Defendants deny the allegations in Paragraph 65 of Plaintiff's

Complaint.

#### COUNT IV [*sic.*]

66. Defendants incorporate by reference herein their foregoing responses to Paragraphs 1 through 65 of Plaintiff's Complaint in their entirety.

67. Defendants deny the allegations in Paragraph 67 of Plaintiff's

Complaint.

Defendants deny the allegations in Plaintiff's prayer for relief and any allegations, whether express or implied, contained in Plaintiff's Complaint not heretofore specifically admitted or otherwise responded to in this Answer; and Defendants deny that they are liable to Plaintiff in any amount under any theory of recovery or cause of action or that Plaintiff is entitled to any remedy or relief in

this action.

**SECOND DEFENSE**

Plaintiff's Complaint fails to state a claim for which relief can be granted.

**THIRD DEFENSE**

Plaintiff's claims are barred by the statute of frauds and/or the parol evidence rule.

**FOURTH DEFENSE**

Plaintiff's claims are barred by the doctrines of waiver, ratification, unclean hands, and/or estoppel.

**FIFTH DEFENSE**

Plaintiff's claims are barred by the applicable statute(s) of limitations and/or the doctrine of laches.

**SIXTH DEFENSE**

Plaintiff's claims are barred or diminished by Defendants' rights of setoff, recoupment, and/or restitution.

**SEVENTH DEFENSE**

Plaintiff's claims are barred or diminished by Plaintiff's contributory and/or comparative negligence.

**EIGHTH DEFENSE**

Plaintiff's claims are barred by her failure to tendered amounts admittedly

owed under the subject loan.

**NINTH DEFENSE**

Plaintiff's claims are barred or diminished to the extent she failed to mitigate her alleged damages.

**TENTH DEFENSE**

Plaintiff's claims for breach of contract are barred by her failure of performance, and by her material and substantial breaches, of her contractual obligations.

**ELEVENTH DEFENSE**

Plaintiff's state law claims are preempted by federal law.

**TWELFTH DEFENSE**

Service is ineffective.

**THIRTEENTH DEFENSE**

Plaintiff's claims for equitable or quasi-equitable relief are barred because of the existence of an adequate remedy at law, and Plaintiff is not at risk of suffering any irreparable harm.

**FOURTEENTH DEFENSE**

Some or all of Plaintiff's claims are moot.

**FIFTEENTH DEFENSE**

Plaintiff lacks standing to prosecute some or all of her claims.

**SIXTEENTH DEFENSE**

Plaintiff has failed to plead her fraud claims with the particularity required by Fed. R. Civ. P. 9(b).

Defendants reserve the right to assert any additional affirmative defenses and matters in avoidance which may be disclosed during the course of additional investigation and discovery.

WHEREFORE, Defendants respectfully request that the Court grant them the following relief:

- (a) that the Court enter judgment in favor of Defendants and against Plaintiff on all causes of action contained in the Complaint, and that the Complaint be dismissed with prejudice;
- (b) that the costs of this action be cast upon Plaintiff and that Defendants recover from Plaintiffs their litigation costs and expenses, including reasonable attorneys' fees; and
- (c) that this Court grant Defendants such other and further relief as it deems just, equitable and proper.

This 10<sup>th</sup> day of February, 2011.

/s/ A. William Loeffler  
A. William Loeffler  
Georgia Bar No. 755699  
*bill.loeffler@troutmansanders.com*  
Teah N. Glenn  
Georgia Bar No. 430412  
*teah.glenn@troutmansanders.com*

Troutman Sanders LLP  
600 Peachtree Street, N.E., Suite 5200  
Atlanta, GA 30308-2216  
(404) 885-3000  
(404) 885-3900 (fax)

Counsel for Defendants

**CERTIFICATE OF SERVICE**

This is to certify that I have this date filed the within and foregoing using the Court's ECF system, which will effect service on the following counsel for Plaintiff:

David C. Ates, Esq.  
David Ates, P.C.  
6400 Powers Ferry Rd., Suite 112  
Atlanta, Georgia 30339

This 10<sup>th</sup> day of February, 2011.

/s/ A. William Loeffler  
A. William Loeffler